

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121241-001

Priority Health

Respondent

Issued and entered
this 27th day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On May 6, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation (OFIR) under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

Priority Health was immediately notified of the request and asked to furnish the information it used to make its final adverse determination. Priority Health's initial response was received on May 11, 2011. On May 13, 2011, after a preliminary review of the material submitted, the Commissioner accepted the request. On May 18, 2011, Priority Health provided additional information.

The issue in this external review can be decided by an analysis of the contract that defines the Petitioner's health care benefits. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner is a member of Priority Health, a health maintenance organization. Her health care benefits are defined in the Priority Health HMO "Certificate of Coverage" (the certificate) and its "Schedule of Copayments and Deductibles."

On November 29, 2010, the Petitioner received medical services in the emergency room of XXXXX Hospital. Priority Health processed the claim and applied a \$100.00 copayment. The Petitioner asked Priority Health to waive the emergency room copayment.

Priority Health denied the request and the Petitioner appealed. After completing Priority Health's internal grievance process, the Petitioner received Priority Health's final adverse determination dated April 28, 2011.

III. ISSUE

Was Priority Health correct in not waiving the Petitioner's emergency room copayment?

IV. ANALYSIS

Petitioner's Argument

The Petitioner disclosed the following in her request for external review:

I am a marathon runner. I was training on the date in question. I fell doing backward drills. I hit my tailbone very hard. I went to my local PCP [*primary care physician*] and I was told "he's not in and the other Doc in can't see you because he doesn't take Priority Health." I went home and did what I felt was best; I iced my tailbone and took Ibuprofen. The pain continued to make me uncomfortable so I headed to urgent care. Urgent care was closing and suggested I go to ER or contact my physician (PCP). Earlier in the day, after going to my local physician office I telephoned them twice, once to see if "my doc would be in tomorrow" & the answer was "No, if you really need medical attention go to the ER/urgent care." . . . Why am I being penalized w/a \$100 copay?

Priority Health's grievance notes state that, under the circumstances, the Petitioner would like the emergency room visit to be treated as an office visit with a \$25.00 copayment.

Respondent's Argument

In its April 28, 2011, final adverse determination, Priority Health determined:

Uphold benefit application – requested coverage will not be provided.
Priority Health processed the claim appropriately to apply the Emergency Room Services copayment in accordance with the Certificate of Coverage and Schedule of Copayments and Deductibles.

Priority Health argues the Petitioner received emergency room services on November 29, 2010, and emergency room services are subject to a \$100.00 copayment.

Commissioner's Review

The certificate's "Schedule of Copayments and Deductibles" states that emergency room services are subject to a \$100.00 copayment, which is waived only if the member is subsequently admitted as an inpatient.

The Petitioner does not dispute that the care she received on November 29, 2010, was emergency care.¹ Furthermore, there is no claim that the Petitioner was admitted to the hospital following the emergency room visit. Therefore, under the clear language of the certificate, the visit was subject to a \$100.00 copayment. There is nothing in the certificate or state law that requires Priority Health to waive the emergency room copayment under the circumstances in this case and the Commissioner cannot order it to do so.

The Commissioner finds that Priority Health's application of a \$100.00 copayment for the Petitioner's November 29, 2010, emergency room visit was consistent with the certificate.

V. ORDER

The Commissioner upholds Priority Health's April 28, 2011, final adverse determination. Priority Health is not required to waive the \$100.00 emergency room copayment requirement.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

¹ If it had not been emergency care, the Petitioner would have been responsible for the entire charge, not just the copayment. The certificate (p. 6) advises enrollees, "if you use an emergency room or an Urgent Care Center for care that is not for a Medical Emergency or Urgent Care or that could have been provided by your PCP, you must pay for the services."